IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: October 10, 2007

Parties Name

National Fitness Corps Teachers Association

..PETITIONER.

VERSUS

State of Haryana and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. R.K. Malik,
Advocate, for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana;

JASBIR SINGH, J.

Judgment.

This judgment will dispose of Civil Writ Petitions No. 5816 of 1994, 2833 of 1993, 15893 of 2006, 17661 of 1995, 16355, 13731, 11656, 11530, 11073, 7007 and 709 of 1998, 2421 and 2216 of 1999,15778 and 11346 of 2000. For facility of dictating judgment, facts are being taken from CWP No. 5816 of 1994.

Members of the petitioner were the Instructors employed in National Fitness Corps & Discipline (for short NFC). This writ petition has been filed with a prayer to issue a writ of certiorari to quash order dated March 30, 1994 (Annexure P10), vide which it was ordered that pay scale of

the Members of the petitioner (Instructors) be refixed protecting the total emoluments that they were drawing just before their absorption in the State cadre, in the admissible State pay scales, i.e., Rs. 125-5-150/5-250 and Rs. 220-8-300/10-400 for PTIs and DPEs respectively w.e.f. July 1, 1976. Further prayer has been made that respondents No. 1 and 2 be directed not to reduce pay scales of the Instrcutors, granted to them, after absorption of their services by the State of Haryana on July 1, 1976. Brief facts giving rise to the writ petition are as follows:

Perusal of records reveals that in the year 1954, the Government of India (Ministry of Education) introduced the National Disciplined Scheme, which, in the year 1965, was redesignated as National Fitness Corps (in short NFC). Members of the petitioner were appointed as Instructors, in that scheme, on the following pay scales:

i. Instructors (Junior Grade): Rs. 110 – 200

ii. Instructors (Senior Grade II): Rs. 150 – 240

iii. Instructors (Senior Grade I): Rs. 210 – 320.

In and around the year 1965, when Instructors were working as employees of the Central Government, a proposal was made for their transfer to the administrative control of the State Governments. In the present case, the Instructors of NFC were put under the control of State of Haryana in the month of October, 1972. However, they continued to be the employees of the Union of India. Thereafter, vide policy decision dated October 14, 1976, Instructors/employees under the National Fitness Corps (i.e., N.F.C.) were decided to be absorbed in the State service w.e.f. July 1, 1976. It was decided to give them the following pay scales:

Posts of Instructors	Central Pay Scale	State Pay Scale
Junior Grade:	Rs. 110 – 200	Rs. 125 250 (Matric & 1 year course of C.P.Ed.
Senior Grade II	Rs. 150 – 240	Rs. 250 - 300 (Selection grade)
Senior Grade I	Rs. 210 – 320	Rs. 220 – 400 (B.A. & D.P.Ed.course)
	Rs. 400 – 800 (Selection grade)	

It was further decided that the pay scales of the Instructors be fixed as per their qualifications. In response to the policy decision, taken by the Union of India vide document Annexure P2, Government of Haryana issued letter dated September 7, 1976 (Annexure P-3) laying down the terms and conditions for absorption of the services of the Instructors (NFC) in the State cadre. 311 temporary posts of PTIs (NFC) and 14 temporary posts of D.P.Es (NFC) were created. Following terms and conditions were laid down for absorption of the service of the Instructors, NFC in the State cadre:

> "The above sanction is subject to the following terms and conditions
>
> "i) that these employees will be kept in a separate block namely P.T.I. (NFC) (without disturbing their inter se seniority in the respective grades) in the cadre of physical education teachers of the State Education Deptt.
>
> ii) that 3 Senior Grade I and II Senior Grade II N.D.S. Instructors will be absorbed in the posts of DPEs (NFC) and 311 Junior Grade I NDS Instructors will be absorbed in the posts of PTIs (NFC). The minimum qualification prescribed

for respective State Pay Scales are relaxed where-ever necessary, in the case of those who do not have qualifications prescribed by the State Government for these posts at the time of their absorption.

iii) that from the date of absorption in the State cadre, the N.D.S. Instructors will be entitled to allowances as admissible to other State Government employees of this cadre.

iv) that the pay and allowances an employee get under the Central Government at the time of absorption in the State Government service will be protected. For this purpose the allowances to be protected are Dearness Allowance, Dearness Pay, Interim relief and Additional Dearness allowances.

v) that their pay in the State Scales will be fixed in accordance with PFR 22(a)(ii) or the correspondence State Government Rules:

vi) that after absorption these employees will be governed in all respects, by the State Governments State Rules/orders amended/issued by the State Government from time to time and will be treated as State Government employees for all purpose.

vii) that the pension and gratuity to those employees will be paid as per State Government Rules after giving them the benefit of their previous service with the Central Government/the Central Government will lateron re-imburse

the expenditure on this account.

viii) that it will be a diminishing cadre. As such, the posts that fall vacant due to retirement, resignation etc. in the lower grade will be absolished. Corresponding reduction will be made in the "Selection Grade" also so that only the required percentage of posts in the Selection Grade is maintained at any point of time. But if a vacancy occurs in higher grade posts it will be filled by promotion on the basis of seniority cum merit from among these employees in the lower grade cadre and the resultant lower grade post will stand abolished.

ix) that the total expenditure on pay, allowances etc. of the NDS Instructors will continue to be re-imbursed by the Government of India to the State Government till they remain in the cadre of PET in which they are absorbed by the State Government. The expenditure on their pension gratuity will also be borne by the Government of India. Besides, expenditure on the pay and allowances of the House -Keeping staff engaged by the State Government for this diminishing cadre shall also be borne by the Government of India for so long as Government meets pay and allowances for the instructional staff, and

x) that only those N.D.S. Instructors will be absorbed in the State Service who join the State service latest by 31st October, 1976."

It is necessary to mention here that till the time services of the Instructors were taken over by the State of Haryana on Ist of July, 1976, pay

scale of other employees of the Union of India were revised several times. However, no revision in pay scale was effected, so far as the Instructors were concerned, on the ground that their services were going to be transferred to the administrative control of the respective State Governments. As per the decision taken by the Union of India, many Instructors were put at the disposal of State of Karnataka. One such Instructor, similarly situated, challenged discriminatory attitude of the Union of India in not effecting revision of pay scales so far as the Instructors of National Fitness Corps were concerned. After many bouts of litigation, matter came up before the Hon'ble Supreme Court in Union of India and another v. R.G. Kashikar and another, 1986(1) S.C.C. 458. The Hon'ble Supreme Court held that the Instructors of NFC were entitled to get revision of pay scales till the time their services were shifted to the respective State Governments. Under circumstances, as are in the present case, it was observed thus:

> "8. We find it rather difficult to subscribe to the view expressed by the learned Judges that although the petitioners before them i.e. Instructors like the respondents here, as Central Government employees should have also been given the benefit of revised pay scales, the proposal to transfer the establishment of the National Fitness Corps to the State Governments had the effect of decentralising the National Discipline Scheme and the Instructors had become surplus at the Centre. Nor can we support their conclusion that classification between the Central Government employees who work on Central Government activities and those who work on State Government activities,

was founded on rational and reasonable foundation and therefore the Instructors belonging to the former class could be treated on a different basis in the matter of their pay scales and other benefits. The underlying fallacy of the reasoning lies in assuming that the Instructors under the scheme ceased to be Central Government employees merely because of the proposal to transfer the establishment of the National Fitness Corps to the State Governments. They continued to be employees of the Central Government till the process of absorption was completed. Until then they were still retained in Central Government service although allocated to different States, and as such employees they were entitled to be treated alike. In order to pass the test of permissible classification, two conditions must be fulfilled, namely: (1) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (2) That that difference must have a rational relation sought to be achieved by the Act. That test is clearly not fulfilled in the case of Instructors under the scheme. The distinction sought to be drawn by the learned Judges between two classes of Central Government employees i.e. those who work on Central Government activities and those who work on State Government activities, is without any rational basis and the Instructors under the scheme could not be treated as a class distinct and separate. Such classification or differentiation of

the Instructors under the scheme as a class of Central Government employees for depriving them of the beenfits in matters relating to employment 'which expression includes matters relating to salary, periodical increments, leave, gratuity, pension, age of superannuation etc., although they continued to remain Central Government employees till the date of absorption was per se discriminatory and violative of Articles 14 and 16 of the Constitution. The judgment of the Bombay High Court in Eknath case does not lay down good law and is accordingly over-ruled."

Keeping in view ratio of the judgment in above mentioned case, the Union of India revised the scales of the Instructors of NFC, absorbed by the State Governents, as under:

"II) N.D.S. Instructors Sr. Gd. II:

Old Pay Scale	Revised Pay Scale	Date from which benefits are to be given
Rs.150-240	Rs. 170 -380	1-1-67
	Rs. 190-425	21-12-67
	Rs. 220-500	27.5.70
	Rs. 250-550	27.5.70
	Rs.440-750	1.1.73

III.N.D.S. Instructors Sr. Gd. I

Sr.No.	Old pay scale	Revised pay scale	Date from which benefit are to be given
	Rs. 210 -320	Rs. 250 – 470	1.1.67
		Rs. 275-550	21.12.67
		Rs.300-600	27.5.70

Rs.350-700 27.5.70

Rs. 550-900 1.1.73”

Respondent No. 3 – Union of India decided to grant benefit of revised pay scale to members of the petitioner vide letter dated August 4, 1988 (Annexure P-5). It was decided that the benefit of the revised pay scale be given to the employees till the date of their absorption in the State/ U.T. service and from the date of their absorption, their pay would be fixed in the State scale. At the time of arguments, it was brought to notice of this Court that respondent No. 3, in fact implemented the decision taken vide order dated August 4, 1988 (Annexure P-5) and till the date of their absorptions, the Instructors of N.F.C. were paid revised pay scales and arrears were also paid to them accordingly.

Respondent No. 2, by taking note of the revision of the pay scales from retrospective date, also revised pay scales of the Instructors, NFC, vide letter dated February 9, 1989 (Annexure P-6) and it was decided that pay scales of the absorbed Instructors will be protected and they will be paid the pay scale of Rs. 400- 800 and Rs. 220 -400 w.e.f. July 1, 1976. It was further decided that amount of arrears be also paid to them. Subsequent thereto, by issuing order Annexure P-7 dated July 3, 1992, benefit granted vide order Annexure P-6 dated February 9, 1989, was withdrawn on the ground that the Government has not approved the same. The Instructors of NFC were held entitled to get pay scale, which was granted to them initially by issuing order Annexure P-3. Order Annexure P-7, referred to above, was challenged by the petitioner by filing C.W.P. No. 10011 of 1992, which was allowed on December 8, 1993 and the order

dated July 3, 1992 (Annexure P-7) was quashed. Liberty was granted to the petitioner to make a representation as to why its members are entitled to higher pay scale. In compliance with the order, passed by this Court, the petitioners filed representation Annexure P-9 dated December 21, 1993, stating therein that they were entitled to get higher pay scale in view of retrospective revision of their pay scale by the Central Government from 1967 and their pay, which they would have been drawing, if they had remained in Central Government service on July 1, 1976, is required to be protected. Their representation was declined vide order dated March 30, 1994 (Annexure P-10). Hence this writ petition.

Counsel for the petitioner has vehemently contended that by non-grant of benefit of revised pay scale to members of the petitioner, they were put to loss. When their services were absorbed in the State of Haryana, it was decided that pay and allowances, which the employees were getting under the Central Government, at the time of absorption in the State cadre, will be protected. Dispute regarding revision of pay scale by the Central Government was going on and the same was finally settled by Hon'ble the Supreme Court of India in **R.G. Kashikar's case** (supra). Therein the Hon'ble Supreme Court held that the Instructors of NFC were also entitled to get benefit of revision of pay scales, because till the date of their absorptions, they were employees of the Central Government. Counsel contended that in view of judgment of the Hon'ble Supreme Court, pay scales of the Instrctors, NFC, were revised vide order Annexure P-4 w.e.f. January 1, 1967 till January 1, 1973, and arrears were also paid to them till they were absorbed in the State service.

By referring to above mentioned facts, counsel for the

petitioner submitted that if the Instructors , NFC, had continued to remain on the cadre of Central Government, they would have been getting higher pay scale as on July 1, 1976, when their services were absorbed by the State of Haryana. By placing reliance on condition No. 4(iv) in the order of absorption (Annexure P-3), counsel argued that revised pay, which the Instructors, NFC, would have been getting on the date of absorption, was required to be protected. Counsel further contended that for all intends and purposes, Instructors, NFC, remained on the cadre of Central Government, even after transfer of their service to the State of Haryana. To say so, he has referred to condition No. 4(ix) in the order of absorption (Annexure P-3), wherein it is mentioned that total expenditure of Instructors, NFC, would be borne by the Government of India. He argued that respondent No. 2 has acted in a very arbitrary manner at the time of passing order Annexure P-10. He prayed that the same be quashed and the Instructors, NFC, be given the benefit of revised pay scale, which they were drawing, w.e.f. the date of their entry in the State service and they be also given benefit of revision of pay scales from time to time by the State Government as was given to other State Government employees.

Contentions of counsel for the petitioner have vehemently been opposed by counsel for the respondents. It was argued that once the Instructors, NFC, have accepted a particular pay scale at the time of their absorption, they are not entitled to get any higher pay scale on account of revision of pay scale by the Central Government. He prayed that the writ petition, having no substance, be dismissed.

After hearing counsel for the parties, this Court is of the view that the writ petition deserves to be allowed. It is not in dispute that since

the year 1965, the Central Government was contemplating transfer of services of Instructors, NFC, to the respective States. To implement that scheme, administrative control of the employees was shifted to the State of Haryana in the month of October, 1972. However, they continued to be employees of the Union of India. Ultimately, it was decided that they be absorbed in the State cadre w.e.f. July 1, 1976. Particular grade, which the employees were getting in the year 1976, was protected and equal scale of pay was granted to them under the State Government. Clause 4(iv) of order Annexure P-3 envisages the pay protection of the absorbed employees. It was also decided that service of the absorbed Instructors of NFC would be put in a separate diminishing cadre. The members of the petitioner continued to get pay scale, given to them vide order Annexure P-3. It is also an admitted fact that since the year 1967 till the year 1976, the Central Government did not revise pay scale of the Instructors of NFC supposedly on the presumption that their services were going to be transferred to the respective States. The employees continued to get the unrevised scale of pay while working with the Central Government. Matter went to the Hon'ble Supreme Court and in **R.G.Kashikar's case** (supra), it was observed that till such time the employees were absorbed in the State cadre, they continued to remain the employees of the Central Government and were held entitled to the same treatment, which was given to other Central Government employees. In view of judgment of the Hon'ble Supreme Court, pay of the Instructors, NFC, was revised vide order Annexure P-4 from 1967 till the time they continued on the roll of the Central Government.

Facts, mentioned above, clearly indicate that if the Central

Government had revised pay scale of the Instructors, well in time, they would have been getting the higher pay scale as on July 1, 1976, which was given to them vide order Annexure P-4 in the year 1986 and implemented vide order Annexure P-5 in the year 1988. In Annexure P-3, ordering absorption of the Instructors, NFC, it is specifically mentioned that pay and allowances , which an employee was getting under the Central Government at the time of absorption in the State Government services will be protected.

In view of clause 4(iv), this Court feels that on revision of pay scale, from retrospective date, by the Central Government, Instructors, NFC, and other employees, who were absorbed, were entitled to get protection for their deemed increase in pay scales from July 1, 1976.

Furthermore, in view of terms and conditions of their absorption, as depicted in Annexure P-3, dated October 14, 1976, it is apparent that the Instructors, NFC, notionally remained employees of the Central Government. Clause 4(ix) lays down that total expenditure of pay, allowances etc. of the NDS Instructors would continue to be re-imbursed by the Government of India to the State Government till they remain in the cadre of PET, in which they are absorbed by the State Government. It was further provided that expenditure on their pension, gratuity etc. would also be borne by the Central Government. Besides expenditure on the pay and allowances of the house keeping staff engaged by the State Government for this diminishing cadre was also to be borne by the Government of India for so long as Government meets pay and allowances on the Instructional staff.

Above said condition clearly demonstrates that only administrative control was shifted to the State Government and notionally the employees were absorbed and put in a separate diminishing cadre. In

view of this, they are entitled to get their pay protected.

In view of facts, mentioned above, these writ petitions are allowed. Order Annexure P-10 is set aside and it is directed that the PTIs, (NFC) and DPEs (NFC) be given benefit of revised pay scale, as was given to them vide order Annexure P-4 w.e.f. July 1, 1976, which obviously means that the pay scale, which above mentioned employees would have been getting on July 1, 1976, after implementation of order Annexure P-4, be protected in view of terms and conditions of Annexure P-3 and they be also given benefit of subsequent revision of pay scale as was given to its other employees by the State of Haryana. Order Annexure P-6 dated February 9, 1989, is restored.

October 10, 2007. (Jasbir Singh)
DKC Judge